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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/599,283	09/25/2006	Norbert Becker	071308.0770	6477

86528 7590 02/26/2010  
King & Spalding LLP  
401 Congress Avenue  
Suite 3200  
Austin, TX 78701

EXAMINER
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ROSENBAUM, MARK

ART UNIT	PAPER NUMBER
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3725

MAIL DATE	DELIVERY MODE
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02/26/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/599,283	<b>Applicant(s)</b> BECKER ET AL.	
	<b>Examiner</b> Mark Rosenbaum	<b>Art Unit</b> 3725	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 January 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 19-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17, 20, 21 is/are rejected.
- 7) ☒ Claim(s) 19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Allowable Subject Matter***

Claim 19 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Response to Arguments***

Applicant's arguments filed 1/11/10 have been fully considered but they are not persuasive. Explanations for the rejections are set forth below. In general, the breadth of the claimed subject matter allows for the claims to be read on the prior art as set forth below.

### ***Claim Rejections - 35 USC § 112***

Claims 14-17,20,21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 14-17 make no sense as written. Claim 14 is drawn to a 'drive device' (see preamble), but the body of the claim is drawn to a control device that controls the drive device i.e. a device that controls the drive device is not part of the drive device such that the preamble to claim 14 is misleading and confusing as to what is trying to be claimed. Clarification is required. Also, it is not clear how claims 20 and 21 differ from each other.

### ***Claim Rejections - 35 USC § 102***

Claims 11-14,20,21 are rejected under 35 U.S.C. 102(b) as being anticipated by Mueller et al. This patent discloses a control device for a drum that oscillates the drum.

Art Unit: 3725

For these claims, that is the only apparatus that is being positively claimed. The remainder of the claims are intended use only. For example, 'in order to detach the frozen charge from the grinding pipe' in claim 11 provides no positively claimed structure other than a drum/pipe previously claimed. Further arguments for patentability of these claims over Mueller et al should be directed towards apparatus that is being positively claimed that is not shown in the patent, not intended use of the apparatus.

Claims 11-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Fesmire et al. This patent shows a drum that can oscillate; note particularly column 9, lines 40-44. As broadly claimed, this meets the claimed subject matter. As noted above, much of the language of these claims is intended use only and not positively cited apparatus limitations.

Claims 1,2,4,5,7-9,11-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Tirschler '841. This patent discloses the basic process and apparatus of detecting a frozen charge in a tube mill and stopping the mill so that the charge can be removed. This meets the subject matter of these claims as broadly claimed by applicants. For example, claim 1 states that the speed of rotation is varied to detach the frozen material. This broad process step reads on the frozen material being detected, the mill stopped, and the charge removed which is what is disclosed in the patent. Further arguments against this patent rejection should be drawn to what steps/apparatus are being positively claimed, not what is being disclosed in the specification as applicants have done throughout their arguments in the newly submitted amendment.

***Claim Rejections - 35 USC § 103***

Claims 16,17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fesmire et al. The use of converters and ring motors is well known in the mechanical arts and of no patentable merit. Modifying Fesmire et al by providing such apparatus would have been well within the scope of one skilled in the art.

Claims 3,6,10,16,17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tirschler '841. Wetting material to help move it is well within the scope of one skilled in the art and of no patentable merit. Also, the use of converters and ring motors is well known in the mechanical arts and of no patentable merit. Modifying Tirschler by providing such apparatus would have been well within the scope of one skilled in the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Rosenbaum whose telephone number is 571-272-4523. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dana Ross can be reached on 571-272-4480. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3725

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Mark Rosenbaum  
Primary Examiner  
Art Unit 3725

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Primary Examiner, Art Unit 3725